

June 7, 2016

The Honorable Thomas J. Wheeler
Chairman, Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Wheeler and Members of the Commission:

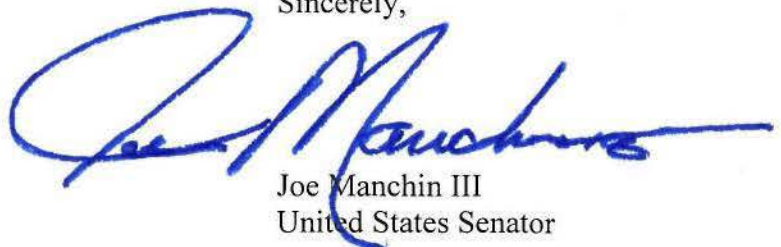
I write to you regarding the Federal Communication Commission's ("Commission") recent Notice of Proposed Rulemaking (NPRM) designed to provide consumers with greater choice in how they access their video programming. I support the mandate of Section 629 of the Communications Act to ensure the commercial availability of competitive boxes and equipment for consumers to access their video programming, and the Commission's proposal continues the important debate about the best way to promote competition in the set-top box marketplace. However, I urge the Commission to fully consider the effects of the proposed rule on consumer privacy and customer service to ensure the voices of all stakeholders are being considered before approving a final rule.

The Commission's proposed rule must not undermine the fundamental consumer privacy and security protections of the Communications Act. Specifically, I am concerned that the proposal considers allowing third-party navigation devices to "self-certify" their compliance with subscriber privacy protections. It is imperative that the Commission fully considers whether a self-certification process could create a dangerous loophole within our current privacy and security protections. As the NRPM notes, any rules must not undermine the underlying consumer privacy goals of the Communications Act.

I am also troubled that the proposal may not preserve the customer service rights of consumers. Cable operators, for example, have customer service obligations to maintain telephone availability 24 hours a day, seven days a week. Customers must receive identical services from third-party providers of navigation devices necessary to resolve technical issues they may encounter with those devices. I am concerned that, without explicit protections, this proposal could diminish the ability of consumers across the nation to access the technical assistance they need to operate and maintain their video programming device.

While I share the goal of the Commission to bring more competition to the set-top box marketplace, I strongly encourage the Commission to fully consider the innovation and rapid evolution of the current market. Please feel free to contact Lance West in my office if you have any questions or need any additional information. He can be reached at 202-224-3954 or Lance_West@manchin.senate.gov. Thank you for your time. I look forward to your response.

Sincerely,



Joe Manchin III
United States Senator



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Joe Manchin
United States Senate
306 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Manchin:

Thank you very much for your letter sharing your views about how the Commission's proceeding for better fostering competition in the set-top box and navigation app marketplace might impact the privacy protections afforded to pay-TV consumers and the customer service experience received by pay-TV subscribers. I take your input on these issues seriously and assure you that it will receive careful consideration.

Section 629 of the Communications Act, adopted by Congress in 1996, requires the Commission to promote competition in the market for devices that consumers use to access their pay-television content. Yet, unfortunately, the statutory mandate in section 629 is not yet fulfilled. The lack of competition in this market has meant few choices and high prices for consumers. In a recent Rasmussen Report Study, 84 percent of consumers felt their cable bill was too high. One of the main contributing factors to these high prices is the no-option, add-on fee for set-top box rental that is included on every bill, forcing consumers to spend, on average, \$231 in rental fees annually. Even worse, a recent congressional investigation found that the price of most equipment fees is determined by what the market will bear, and not the actual cost of the equipment.¹ With the lack of competition in this market, it should come as little surprise that fees for set-top boxes continue to rise.² Clearly, consumers deserve better.

This February the Commission put out for public comment a proposal that would fulfill the statutory requirement of competitive choice for consumers. This action opened a fact-finding dialog to build a record upon which to base any final decisions. Our record already contains more than 280,000 filings, the overwhelming majority of which come from individual consumers. FCC staff is actively engaged in constructive conversations with all stakeholders—content creators, minority and independent programmers, public interest and consumer groups, device manufacturers and app developers, software security developers, and pay-TV providers of all sizes—on how to ensure that consumers have the competition and choice they deserve. I am hopeful that these discussions will yield straight-forward, feasible and effective rules for all.

¹ U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS COMMITTEE, MINORITY STAFF REPORT, INSIDE THE BOX: CUSTOMER SERVICE AND BILLING PRACTICES IN THE CABLE AND SATELLITE INDUSTRY, 17 (Jun. 23, 2016).

² One recent analysis found that the cost of cable set-top boxes has risen 185 percent since 1994 while the cost of computers, television and mobile phones has dropped by 90 percent during that same time period.

You shared your views about how this proceeding might affect the privacy protections afforded to pay-TV consumers. I share your goal of ensuring that the privacy protections that exist today will also apply to alternative navigation devices and applications. Pay-TV providers abide by privacy obligations under Sections 631 and 338 of the Communications Act. These privacy obligations, among other things, prohibit pay-TV providers from disclosing personally identifiable information concerning any subscriber, including data about a subscriber's viewing habits, without the subscriber's prior consent.

I strongly believe that third-party app developers and device manufacturers must afford consumers the same level of protection as afforded by pay-TV providers. While the Notice of Proposed Rule Making (NPRM) proposes that competitive devices and apps certify compliance with the privacy protections in the Act, we also invited parties to provide alternative proposals that would ensure the preservation of these important privacy protections.

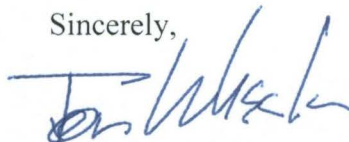
We will continue to engage with stakeholders on this important issue. Notably, our record includes filings on this issue from the Federal Trade Commission (FTC) and a group of state attorneys general (state AGs)—representing the states of California, Illinois, New York, Connecticut, Iowa, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, Oregon, Pennsylvania, Vermont, and the District of Columbia. In their comments, the FTC and the state AGs explain that—if we require competitive devices and apps to publicly commit to providing the same privacy protections required of pay-TV providers under the Communications Act—the FTC and the state AGs would be willing and able to enforce the privacy commitments made by third party app and device manufacturers just as they currently enforce other privacy commitments made by apps and devices. I am confident that by working with stakeholders and our federal and state partners, we will identify clear rules of the road that will afford consumers with strong privacy protections and the enforcement mechanisms necessary to ensure compliance by third parties.

I share your interest in ensuring that our proceeding preserve the customer service rights of consumers. Last month, the Senate Homeland Security and Government Affairs Committee, Permanent Subcommittee on Investigations, released a bipartisan staff report critical of the billing and customer service practices of certain cable providers. Notably, the report found that certain cable companies were routinely overcharging consumers for leased equipment, including set-top boxes. Bringing competition to this market will drive cable companies to improve upon these customer service and billing practices and provide consumers with alternatives if consumers are dissatisfied with the equipment policies of their pay-TV company. Moreover, just as competition in the landline and mobile phone equipment industries did not diminish the ability of consumers to operate and maintain their telephone devices, I am confident that competition in this market will not inhibit the ability of consumers across the nation from accessing the technical assistance they need to operate and maintain their access to pay-TV content.

The record we are developing will help us preserve strong privacy protections and improve the customer service experience of pay-TV subscribers while delivering American

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consumers meaningful choice. Thank you for your engagement in this proceeding, and I look
forward to continuing to work with you on this important consumer issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized, flowing script.

Tom Wheeler